



**NOTICE OF TELECONFERENCE – CORRECTED COPY**  
**ENFORCEMENT COMMITTEE MEETING**

**April 18, 2013**

**1:00 p.m.**

**2525 Natomas Park Drive, Suite 260  
Sacramento, CA 95833  
(916) 263-5355**

**Teleconference Locations with Public Access**

Dr. Francesco Columbu, D.C. 2265 Westwood Blvd, Ste A Los Angeles, CA 90064 (310) 234-1160	Dr. Sergio Azzolino, D.C. 1545 Broadway St, Ste 1A San Francisco, CA 94109 (415) 563-3800
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**AGENDA**

- 1. Call to Order**
- 2. Approval of Minutes**  
January 30, 2013
- 3. “Group-On” and other Internet Marketing Sites – Business and Professions Code Section 650**
- 4. Chiropractic Specialties – Status of Department of Industrial Relations Qualified Medical Examiner Eligibility Regulations**
- 5. Continuation of the Disciplinary Guidelines Review**
- 6. Incorporating Citations into the Disciplinary Guidelines**
- 7. Public Comment**
- 8. Future Agenda Items**
- 9. Adjournment**

**ENFORCEMENT COMMITTEE**

Sergio Azzolino, D.C., Chair  
Francesco Columbu, D.C.  
Hugh Lubkin, D.C.

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Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at [www.chiro.ca.gov](http://www.chiro.ca.gov).

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The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Marlene Valencia at (916) 263-5355 ext. 5363 or e-mail [marlene.valencia@chiro.ca.gov](mailto:marlene.valencia@chiro.ca.gov) or send a written request to the Board of Chiropractic Examiners, 2525 Natomas Park Drive, Suite 260, Sacramento, CA 95833. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

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**Board of Chiropractic Examiners  
TELECONFERENCE MEETING MINUTES  
Enforcement Committee  
January 30, 2013  
2525 Natomas Park Drive, Suite 260  
Sacramento, CA 95833**

**Teleconference Locations with Public Access**

Dr. Francesco Columbu, D.C.  
2265 Westwood Blvd, Ste A  
Los Angeles, CA 90064  
(310) 234-1160

Dr. Sergio Azzolino, D.C.  
1545 Broadway St, Ste 1A  
San Francisco, CA 94109  
(415) 563-3800

Dr. Hugh Lubkin, D.C.  
9381 E. Stockton Blvd, Ste 220  
Elk Grove, CA 95624  
(916) 685-1718

**Committee Members Present**

Sergio Azzolino, D.C., Chair  
Francesco Columbu, D.C.  
Hugh Lubkin, D.C.,

**Staff Present**

Robert Puleo, Executive Officer  
Sandra Walker, Compliance Manager  
Linda Shaw, Licensing/CE Manager  
Christina Bell, Associate Governmental Program Analyst  
Dixie Van Allen, Associate Governmental Program Analyst  
Ray Delany, Management Services Technician  
Valerie James, Office Technician

**Call to Order**

Dr. Azzolino called the meeting to order at 1:03 p.m.

**Roll Call**

Dr. Columbu called the roll. All committee members were present.

**Approval of August 30, 2012 Minutes**

**MOTION: DR. LUBKIN MOVED TO APPROVE THE MINUTES**

**SECOND: DR. COLUMBU SECONDED THE MOTION**

**VOTE: 3-0**

**MOTION CARRIED**

### **Disciplinary Guidelines**

Dr. Azzolino suggested working on each item individually from the Disciplinary Guidelines document.

The committee requested the following documents be provided at next the Committee Meeting:

- Practice Monitor Application
- Notification to Patients

Staff provided a sample copy of a Billing Monitor Quarterly Evaluation Report form, after the committee approved billing monitor as a new section in the Disciplinary Guidelines.

Dr. Lubkin commented on creating a new category for informal decisions such as citation and fines and Letters of Admonishments.

Mr. Puleo will have staff create a document, to add to the disciplinary guidelines, creating penalties for informal disciplinary violations with associated range of fines which will include an introductory paragraph explaining the use. The document will be provided at a future Committee meeting.

### **MOTION: DR. AZZOLINO MOVED TO DRAFT A CATEGORY EXPLICITLY STATING THE CITATION AND FEES**

Mr. Puleo recommended creating an informal category for citation and fines and Letters of Admonishment.

**MOTION: DR. AZZOLINO AMENDED THE MOTION TO DIVIDE THE FORMAL AND INFORMAL CATEGORIES. THE INFORMAL CATEGORIES WILL INCORPORATE THE CITATION AND FINES AND LETTER OF ADMONISHMENT WITH RANGE OF FINES**  
**SECOND: DR. LUBKIN SECONDED THE MOTION**

**VOTE: 3-0**

**MOTION CARRIED**

The Committee proceeded to make changes to the Disciplinary Guidelines sections: Factors to be Considered in Determining Penalties; Terms of Probation – Standard Conditions and Optional Conditions; Category I; Category II; Category III; and, Category IV.

In reviewing the Category III violations, Dr. Lubkin requested to carry over discussion on B&P sections 725, 726 and 810 at a future Committee meeting.

**MOTION: DR. LUBKIN MOVED TO APPROVE THE CHANGES TO THE DISCIPLINARY GUIDELINES AS DISCUSSED**

**SECOND: DR. AZZOLINO SECONDED THE MOTION**

**VOTE: 3-0**

**MOTION CARRIED**

The Committee approved the attached document with changes to the Disciplinary Guidelines as incorporated herein (Attachment A).

### **Adjournment**

Dr. Azzolino adjourned the meeting at 2:15

**CHANGES TO THE DISCIPLINARY GUIDELINES AS APPROVED AT THE  
JANUARY 30, 2013 ENFORCEMENT COMMITTEE MEETING  
(Attachment A)**

**DISCIPLINARY GUIDELINES**

**Factors to Be Considered in Determining Penalties**

Section 10(b) of the Chiropractic Act provides that the Board may discipline a holder of, or suspend or revoke, any license issued by the Board.

In determining whether the minimum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. ~~Actual or potential harm to the public— consumer or patient~~ Actual, potential threat or harm to the public,
2. ~~Actual or potential harm to any consumer consumer or patient~~ Actual, potential or threat of harm to any
3. Prior disciplinary record including level of compliance with disciplinary order or probation terms
4. Prior warnings of record including final citations issued within the last 5 years
5. Number and/or variety of current violations
6. Nature and severity of the acts(s), offenses(s), or crime(s) under consideration
7. Mitigating evidence
8. Rehabilitation evidence
9. Compliance with terms of any criminal sentence or probation
10. Overall criminal record
11. Time passed since the act(s) or offenses occurred
12. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
13. The financial benefit to the respondent from the misconduct
14. Intent of Actions
15. Act(s) of remorse
16. Death, or serious bodily injury of patient or consumer, due to gross negligence or criminal violations -RP to consult counsel

No one of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

**Terms of Probation**

Probation conditions are divided into two categories: 1) standard conditions that shall appear in all probation cases; and, 2) optional conditions that depend on the nature and circumstances of a particular case. The Board prefers that the optional conditions be placed before the standard conditions in sequence in the proposed disciplinary order.

The Board may also impose other conditions appropriate to the case as long as the condition is not contrary to public policy.

**Standard Conditions** - To be included in all probation decisions/orders.

1. Obey all laws
2. Quarterly reports
3. Probation monitoring
4. Interview with Board
5. Continuing education
6. Reimbursement of Board costs
7. Tolling of probation
8. No Preceptorships or Supervision of Interns
9. Violation of probation
10. Notification of employment
11. Notice to employers
12. Notice to employees
13. License surrender
14. Completion of probation

**Optional Conditions**

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ Drug and Alcohol Testing
7. Law Examination
8. SPEC Examination
9. ~~Monitoring Practice~~ Monitoring by another Licensed Doctor of Chiropractic
10. ~~Auditing of billing practices~~ CPA
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ Ethics and Boundaries Examination (NBCE)
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence - sexual transgressors~~ Third Party - Patient Chaperone
20. Notification to patients
21. Criminal Probation/Parole Reports
22. Billing Monitor

## Categories of Violations and Recommended Penalties

The Chiropractic Initiative Act and the California Code of Regulations specify the offenses for which the Board may take disciplinary action. The following are categories of violations used by the Board in determining appropriate disciplinary penalties.

The Board also has the authority, pursuant to California Code of Regulations section 304, to impose discipline based on disciplinary action taken by another jurisdiction. The discipline imposed by the Board will typically correspond with the discipline imposed by the other jurisdiction for similar offenses.

### CATEGORY I

Minimum: Revocation stayed; 1-2 years probation

Maximum: Revocation

All standard terms and conditions.

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ Drug and Alcohol Testing
7. Law Examination
8. SPEC Examination
9. ~~Monitoring~~ Practice Monitor
10. ~~Auditing of billing practices~~ CPA
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ Ethics and Boundaries Examination (NBCE)
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence - sexual transgressors~~ Third Party - Patient Chaperone
20. ~~Notification to patients~~
21. Criminal Probation/Parole Reports
22. Billing Monitor

## Category I cont

Recommended but not limited to for the following violations which are relatively minor, but are potentially harmful, or for repeated violations of a relatively minor nature:

### *Chiropractic Initiative Act*

5 Practicing without a valid license

10(b) Improper use of fictitious names

### *California Code of Regulations*

302.5 Use of Laser

~~303 Practicing without notifying Board of business address~~ Filing of Address

304 Discipline by Another Jurisdiction

~~308 Practicing without properly posting license; failure to obtain and post satellite office~~

~~Certificate-~~ Display of License

310 Change of name

310.2 Use of the title "Chiropractor" by unlicensed persons

311 Advertising

312 Unlicensed practice (*for use in less egregious cases or for applicants*)

314 Law Violators

317(v) Waiving co-payments or deductibles

317(x) Substitution of a spinal manipulation for vaccination

317.2 Gag Clauses in Civil Agreements Prohibited

317.3 Licensee Reporting Requirements

318 (a)(b)Chiropractic Patient Records/Accountable Billings

319.1 Informed Consent

366 Continuing Education Audits

367.5 Application for chiropractic corporation

367.7 Name of corporation

367.9 Shares: ownership and transfer

### *Business and Professions Code*

1051 Application for registration as a chiropractic corporation

### *Health and Safety Code*

123110 Failure to provide ~~treatment~~ patient records

## **CATEGORY II**

Minimum: Revocation stayed, 3 years probation

Maximum: Revocation

All standard terms and conditions of probation

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ Drug and Alcohol Testing
7. Law Examination
8. SPEC Examination
9. ~~Monitoring Practice Monitor~~
10. ~~Auditing of billing practices~~ CPA
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ Ethics and Boundaries Examination (NBCE)
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence - sexual transgressors~~ Third Party - Patient Chaperone
20. Notification to patients
21. Criminal Probation/Parole Reports
22. Billing Monitor



## Category II cont.

Recommended for violations with a more serious potential for harm, for violations which involve greater disregard for chiropractic law and public safety, or for violations which reflect on ethics, care exercised or competence.

### *Chiropractic Initiative Act*

10(b) Advertising treatment of sexual disorders

15 Misleading use of title

### *California Code of Regulations*

306.1(c) Failure to appear for hearing

311 Advertising

312 Unlicensed practice (*for use in more egregious cases*)

#### 314 Law Violators

317(l) Making or signing false documents

317(n) Making false statement on the license application

317(p) False, misleading, or deceptive advertising

317(r) Unauthorized disclosure of patient information; failure to maintain confidentiality

317.1 Failure to register referral service

318(a) Chiropractic patient records

318(b) Accountable billings

319 Inappropriate billing for services advertised as free or discounted

~~319.1 Informed Consent~~

~~355 Renewal and Restoration~~

366 Continuing Education Audits

### *Business and Professions Code*

650.3 Group advertising and referral services

651 False, misleading, or deceptive advertising

### **CATEGORY III**

Minimum: Revocation stayed, minimum 30 days suspension, 5 years probation

Maximum: Revocation

All standard terms and conditions of probation

Optional terms and conditions, as applicable

1. Actual suspension
2. Drugs - Abstain from use
3. ~~Drug abuse counseling/detoxification~~ Drug and Alcohol Abuse Treatment/Counseling
4. Alcohol - Abstain from use
5. ~~Alcohol abuse counseling/detoxification~~
6. ~~Blood and/or urine testing~~ Drug and Alcohol Testing
7. Law Examination
8. SPEC Examination
9. ~~Monitoring Practice Monitor~~
10. ~~Auditing of billing practices~~ CPA
11. Restitution for consumers
12. Psychiatric or Psychological evaluation
13. Psychotherapy
14. Medical evaluation
15. ~~Ethics Course~~ Ethics and Boundaries Examination (NBCE)
16. Education Course
17. Community service
18. Restricted practice
19. ~~Third party presence - sexual transgressors~~ Third Party - Patient Chaperone
20. Notification to patients
21. Criminal Probation/Parole Reports
22. Billing Monitor

### Category III cont.

Recommended for less egregious criminal convictions involving moral turpitude, sexual misconduct or fraudulent acts committed in connection with the licensee's practice. Also to be used in cases involving gross negligence/incompetence, capping, steering, accepting fees for patient referrals, excessive treatment or for failure to refer a patient to another licensed care provider.

#### *Chiropractic Initiative Act*

##### 7 Unauthorized practice of medicine

#### *California Code of Regulations*

302(a) Practice exceeding the scope of practice

302(a)(5) Use of drug or medicine in materia medica

302.5 Use of Laser

312(c) Failure to properly supervise

313 Inducing student to practice chiropractic

314 Law Violators

316(a) Responsibility for conduct on premises *(for use in less egregious cases)*

316(b) License used in connection with sexual acts *(for use in less egregious cases)*

316(c) Sexual relations with a patient *(for use in less egregious cases)*

317(a) Gross negligence *(for use in less egregious cases)*

317(b) Repeated negligent acts *(for use in less egregious cases)*

317(d) Excessive treatment *(for use in less egregious cases)*

317(e) Intentionally or recklessly causing harm to the public

317(f) Administering or use of drugs or alcohol

317(g) Conviction of a crime *(for use in less egregious cases, including fraud)*

317(h) Conviction involving moral turpitude, dishonesty, or corruption *(for use in less egregious cases, excluding fraud)*

317(i) Conviction involving dangerous drugs or alcohol

317(j) Dispensing or administration of drugs

317(k) Commission of dishonest or fraudulent act related to duties or functions of license

317(l) Making or signing false documents

317(m) Aiding and abetting unlicensed activity

317(q) Obtaining fee by fraud or deceit

317(s) Use of cappers or steerers

317(t) Fee for referrals

317(w) Failure to refer a patient to other licensed health care provider **RP to consult counsel**

318.1 Standard of Care Regarding Manipulation Under Anesthesia (MUA)

#### *Business and Professions Code*

~~4054 Name of a chiropractic corporation~~

~~4055 Officers of chiropractic corporation not licensed as required in Professional Corporation Act~~

725 Excessive prescribing or treatment *(for use in less egregious cases)*

726 Sexual relations with patients *(for use in less egregious cases)*

810 False or fraudulent claims *(for use in less egregious cases)*

## CATEGORY IV

### Penalty: Revocation

Recommended for **more egregious** cases including, but not limited to, fraudulent activity, physical violence, sexual misconduct, excessive treatment, or improper use of license in connection with sexual acts. Revocation is also recommended when: 1) respondent fails to file a

notice of defense or to appear at a disciplinary hearing where the Board has requested revocation

in the accusation; 2) respondent violates the terms and conditions of probation from a previous disciplinary order; and 3) where prior discipline has been imposed, as progressive discipline unless respondent can demonstrate satisfactory evidence of rehabilitation.

### *California Code of Regulations*

#### 302.5 Use of Laser

316(a) Responsibility for conduct on premises

316(b) License used in connection with sexual acts

316(c) Sexual relations with a patient

317(a) Gross negligence

317(b) Repeated negligent acts

317(d) Excessive treatment

317(g) Conviction of a crime

317(h) Conviction involving moral turpitude, dishonesty, or corruption

317(i) Making or signing false documents

318.1 Standard of Care Regarding Manipulation Under Anesthesia (MUA)

390.7 Sexual Contact With Patient

390.8 Required Actions Against Registered Sex Offenders

### *Business and Professions Code*

725 Excessive prescribing or treatment

726 Sexual relations with patients

810 False or fraudulent claims

## BUSINESS AND PROFESSIONS CODE SECTION 650

650. (a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(1)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(g) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by that imprisonment and a fine of fifty thousand dollars (\$50,000).



State of California  
Edmund G. Brown Jr., Governor

October 25, 2011

Rosa Moran, Administrative Director  
Department of Industrial Relations  
Division of Workers' Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

Dear Ms. Moran:

On behalf of the Board of Chiropractic Examiners (Board), I would like to congratulate you on your appointment as Administrative Director of the Division of Workers' Compensation. Our Board looks forward to working with you and your staff on issues of mutual interest to our respective programs.

We recently had the pleasure of working with your Chief Counsel, Destie Overpeck during the initial promulgation of your Department's Qualified Medical Examiner regulations. We found Ms. Overpeck to be extremely responsive and we appreciated her willingness to meet with us to discuss our Board's concerns regarding the recognition of chiropractic specialties.

In this spirit of cooperation, we would like to enquire as to the current status of the regulation, and to propose a meeting with you, Ms. Overpeck, and any other individuals you feel would be relevant. If at all possible, we would like to have such a meeting prior to our full Board meeting on November 17<sup>th</sup>.

We would also be happy to assist you and your staff by answering any questions you may have regarding the practice of chiropractic, in particular, chiropractic QMEs. In the interim, please don't hesitate to call me at (310) 721-2502, or the Board's Executive Officer, Robert Puleo at (916) 263-5359 if we can be of any assistance to you.

Again, congratulations and good luck to you in your new position.

Best regards,

Dr. Frederick N. Lerner, D.C., Chair

cc: Destie Overpeck

T (916) 263-5355  
F (916) 263-5369  
TT/TDD (800) 735-2929  
Consumer Complaint Hotline  
(866) 543-1311

Board of Chiropractic Examiners  
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**Board of Chiropractic Examiners**

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September 13, 2010

Ms. Carrie Nevans,  
Administrative Director  
Division of Worker's Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612-1402

Dear Ms. Nevans:

On April 14, 2010, CCR Title 16, Section 4, Regulation 311.1 was approved of the Office of Administrative Law as follows:

§ 311.1. Chiropractic Specialties. For purposes of the Department of Industrial Relations' Qualified Medical Evaluator Eligibility regulations (Division of Workers' Compensation, Title 8, California Code of Regulations, Section 12), the board recognizes only those specialty boards that are recognized by the American Chiropractic Association or the International Chiropractors Association.

This regulation, in conjunction with the DWC QME Regulation 12, now requires the DWC Medical Unit to recognize all of the Chiropractic board specialties as referenced above.

§ 12. Recognition of Specialty Boards The Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards for physicians as defined in Labor Code section 3209.3.

Note: Authority cited: Sections 133, 139.2, 139.4, 139.43, 139.45, and 5307.3, Labor Code. Reference: Sections 139.2(b)(3)(A) and 3209.3, Labor Code; Section 651(i) Business and Professions Code.

On April 23rd, we sent a letter to Mr. John Duncan, Director of the Department of Industrial Relations (copy attached) informing him of the new regulation and providing him with a list of the specialties the CBCE now recognizes. Since then, we have not had a response.

We have several licensees who have been asking us when the DWC Medical Unit will be recognizing the Chiropractic specialty boards. We would appreciate receiving a timetable or estimate from the Medical Unit as to when this will be put into effect.

Thank you in advance for your cooperation in this matter. If you have any questions, please contact our Executive Officer, Mr. Robert Puleo at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frederick N. Lerner'.

Frederick N. Lerner, D.C., Ph.D.  
Board Chair

## Board of Chiropractic Examiners

2525 Natomas Park Drive, Suite 260  
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April 23, 2010

John C. Duncan, Director  
Department of Industrial Relations  
455 Golden Gate Avenue  
San Francisco CA 94102

Dear Director Duncan:

I am writing to inform you that, as of April 14, 2010, Regulation 311.1 went into effect which states:

§ 311.1. Chiropractic Specialties.

For purposes of the Department of Industrial Relations' Qualified Medical Evaluator Eligibility regulations (Division of Workers' Compensation, Title 8, California Code of Regulations, Section 12), the board recognizes only those specialty boards that are recognized by the American Chiropractic Association or the International Chiropractors Association.

This regulation is in keeping with Title 1, Division 1, Chapter 1 (Qualified Medical Evaluator Regulations) regulation § 12, which states:

§ 12. Recognition of Specialty Boards

The Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards for physicians as defined in Labor Code section 3209.3.

As a courtesy to your Department and the DWC - Medical Unit, I have enclosed the current list of such specialty programs from the American Chiropractic Association and the International Chiropractors Association.

If you have any questions, please contact me or our Interim Executive Officer, Robert Puleo.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred N. Lerner'.

Fred N. Lerner, D.C., Ph.D.  
Chair, CBCE

enc.



## DISCIPLINARY ORDERS – TERMS AND CONDITIONS

4/18/2013 Meeting Copy – edits made since 1/30/2013\*

### STANDARD CONDITIONS

#### Obey All Laws

Respondent shall obey all federal, state and local laws, and all statutes and regulations governing the practice of chiropractic in California. A full and detailed account of any and all arrests and or convictions for any violations of law shall be reported by the Respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this term and within 45 days of the effective date of this decision, unless previously submitted as part of the licensure application process Respondent shall submit to **the Department of Justice electronic fingerprint images (Live Scan) and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a state or federal criminal record.** completed fingerprint cards and fingerprint fees. Respondent shall submit a recent 2" x 2" photograph of himself or herself within 45 days of the effective date of the final **this decision**.

**RATIONALE:** See Regulation 321.1 fingerprint submission language; "or who are directed by the Board shall successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice". With this condition the Board will be alerted of any criminal law violations by the probationer especially any such occurrences following the start of probation and whether or not the probationer has informed the Board's probation monitor or designee of these arrests.

#### Quarterly Reports

Respondent shall submit quarterly reports under penalty of perjury on a form entitled "Quarterly Probation Report" (No. QPR100 (Rev. 7/04)), certifying and documenting whether there has been compliance with all conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made. **Late or missing reports may be regarded as a violation of probation.**

**RATIONALE:** This provides the Board with a mechanism for maintaining communication with the Respondent. **Late reports or missing reports would be seen as violations, and this enforcement tool could not be utilized in the past because mention of it was missing from term language.**

#### Probation Monitoring

Respondent shall comply with the Board's probation compliance monitoring program, **investigator visits and site inspections.** Failure to comply with probation monitoring shall be considered a violation of probation.

**RATIONALE:** This language includes the investigations unit interacting with probationers as the request of or in coordination with the probation monitor or designee.

### Interview with Board

Respondent shall appear in person for interviews with the Board's enforcement staff, the full Board, or its designee upon request at various intervals and with reasonable notice.

### Continuing Education

Respondent shall provide evidence of continuing education, required for license renewal, if requested by the Board.

### Reimbursement of Board Costs

Respondent shall reimburse to the Board its costs of investigation and enforcement in the amount of \$\_\_\_\_\_. **Respondent may be permitted to pay these costs in a payment plan determined by the Board/designee or as determined in this order. Respondent shall make said payments as follows:** \_\_\_\_\_  
~~If Respondent fails to pay the costs as directed by the Board and on the date(s) determined by the Board, probation shall be automatically extended until such time that all costs are paid in full. Non-payment, by the dates and in the amounts determined by the Board, will be considered a violation of probation. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board. If Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board.~~

**RATIONALE:** The Board's designee (probation monitor) arranges for and monitors receipt of payments from probationers. Many have payment plans when it is specified in their order. This additional language allows Board's designee to review and consider written requests from probationer or to make or modify payment plan arrangements, if payments are not already specified in their order. Furthermore, this additional language provides the Board with support to collect any unpaid costs through appropriate tax agencies from non-compliant Respondents who have filed for Bankruptcy and/or will not pay.

### Tolling of Probation

If Respondent leaves California to reside or practice outside this state, or for any reason should Respondent stop practicing chiropractic in California, Respondent must notify the Board in writing of the dates of departure and return or the dates of non-practice within 10 days of departure or return. Non-practice is defined as any period of time exceeding 30 days in which Respondent is not engaging in the practice of chiropractic or any time the license is inactive or in forfeiture status. Periods of temporary residency or practice outside the state or of non-practice within the state shall not apply to reduction of the probationary period. It shall be a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total, combined total or consecutive period of [ six ] months or [ one, two or three ] \_\_\_\_\_ years.

**RATIONALE:** Per legal, we cannot actively impose or enforce specific terms on Probationers while they are tolling, only reasonably can we enforce that they report any change of address per regulation and that they know about the obey all laws term in the probation order. The other aspects of the additional language changed simply allows probation to be completed in a reasonable time by lessening the likelihood of lengthy probation and also encourages an effective active probation program. Also, it is more effective to reduce or limit tolling time to 6 months for 1 year terms, 1 year maximum for 2 year term, or 2 years maximum for 3-5 year term. "Consecutive period" was removed to avoid probationers tolling up to their limit, returning for a day in CA to practice and then return again to tolling status for another \_\_\_\_\_ years.

### No Preceptorships or Supervision of Interns

Respondent shall not supervise any chiropractic student (intern) participating in a preceptor program or any unlicensed chiropractic graduate and shall not perform any of the duties of a preceptor.

### Violation of Probation

If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation and/or Petition to Revoke Probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been met or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

**RATIONALE:** Paragraph flows better with use additional word for emphasis.

### Notification of Employment

Within 10 days of a change in **chiropractic** employment -- either leaving or commencing **chiropractic** employment -- Respondent shall so notify the Board in writing, including the **name, address, phone number and license number** of the new employer.

**"Chiropractic Employment"** within the meaning of this provision shall include any full-time, part-time, **independent contracting** or temporary service as a chiropractor.

**RATIONALE:** Use of this additional language ensures that the new employment is specific to chiropractic and also includes independent contract work.

### Notice to Employers

Respondent shall notify all present and prospective employers of the Accusation or Statement of Issues and Decision and Order in Case No. \_\_\_\_\_.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new **chiropractic** employment, Respondent shall cause his/her employer to report to the Board in writing acknowledging the employer has read the **Accusation or Statement of Issues and the Decision** in Case No. \_\_\_\_\_.

**"Chiropractic Employment"** within the meaning of this provision shall include any full-time, part-time, **independent contracting** or temporary service as a chiropractor.

**RATIONALE:** Use of this additional language ensures that the new employer has been notified of all aspects of the probation. It also clarifies that only chiropractic employment needs to be reported to the Board. Independent contract work is also captured as employment.

### **Notice to Employees**

Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in chiropractic operations are made aware of all the terms and conditions of probation, either by posting **the Decision and Order** a notice of the conditions of the terms and conditions, circulating **the Decision and Order** such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout probation. Respondent shall ensure that any employees hired or used after the effective date of this Decision are **also** made aware of all the terms and conditions **of probation** by posting a notice, circulating a notice, or both. "Employees" as used in this provision includes all full-time, part-time, temporary and independent contractors employed or hired at any time during probation. Respondent shall, if requested, provide proof to the Board or its designee that all employees are aware of the decision in Case No. \_\_\_\_\_ since its effective date.

**RATIONALE:** Paragraph flows better with use additional words for emphasis.

### **License Surrender**

Following the effective date of this decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily tender his/her license to the Board. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation. Respondent shall relinquish his/her wall license and pocket renewal license to the Board or its designee within 10 days from the date of acceptance. **Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board.**

Respondent may not petition the Board for reinstatement of his/her surrendered license for ~~2 years~~ \_\_\_\_ years from the acceptance date of surrender. If Respondent owes any outstanding costs associated with the investigation and enforcement of this disciplinary action the outstanding amount shall be paid in full **within \_\_\_\_ days of the effective date of this decision** at the time the petition is submitted to the Board.

**RATIONALE:** This condition change permits the Board to determine the appropriate length of time the Respondent should wait to obtain petition for reinstatement of license.

### **Completion of Probation**

Upon successful completion of probation, Respondent's license will be fully restored.

## DISCIPLINARY ORDERS – TERMS AND CONDITIONS

4/18/2013 Meeting Copy –edits made since 1/30/2013\*

### OPTIONAL CONDITIONS

#### Actual Suspension

As part of probation, Respondent is suspended from the practice of chiropractic for (Ex. 30 days) beginning the effective date of this decision. The suspension notice shall remain posted, at Respondent's **primary practice and/or all satellite practice addresses** during the entire period of actual suspension. Respondent shall prominently post **all** suspension notices provided by the Board **at for these locations and also ensure such notices are posted in a place which is both** conspicuous and readable to the public. **(Ex: near entrance to Respondent's primary practice and/or satellite location entrance practice addresses.**

Respondent shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient, member of the public or other person as to the nature of and reason for the suspension.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in the chiropractic practice in which he or she holds an interest at the time this decision becomes effective.

**Failure to post suspension notice as required by this Order may be regarded as a violation of probation. Failure to post the suspension notice(s) provided by the Board will not apply to Respondent's suspension time as designated in this Order and the suspension will remain in effect until there is successful compliance by Respondent in completing the required number of days of suspension.**

**RATIONALE:** This change includes suspension posting at both Satellite and practice addresses, near entrances. The added language covers chiropractors who practice at home. The word "both" is also included so there is no doubt where to put a posted suspension notice. It is assumed that probation conditions are still in effect even during Respondent's suspension period.

#### Drugs - Abstain From Use

Respondent shall abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4022 of the Business and Professions Code, unless prescribed by a medical practitioner for a bona fide illness.

### Alcohol and Drug Abuse Treatment/Counseling

Within 30 days from the effective date of this decision, Respondent shall propose to the Board, for prior approval, the name of one or more inpatient or outpatient alcohol and drug abuse recovery programs which at a minimum is six (6) months in duration. Within 30 days after notification of the Board's approval of such program, Respondent must enroll in the approved program. Failure to complete said program shall constitute a violation of probation. Subsequent to the completion of the program, Respondent shall participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the Board at least 3 times a week during the first \_\_\_\_\_ years/months of probation. Respondent shall submit proof satisfactory to the Board of attendance in said programs. The costs for participation in the programs shall be borne by the Respondent. Respondent shall sign a Release of Information allowing the programs to release to the Board all information the Board deems relevant.

**RATIONALE:** This condition is NEW. It replaces and combines the current and separate alcohol and drug rehabilitation program requirement. The language addition is more specific to time frames required for treatment and allows the Board the option to specify the length of treatment.

### Drug Abuse Counseling/Detoxification

**NOTE-Replaced by Alcohol and Drug Abuse Treatment/Counseling**

### Alcohol - Abstain From Use

Respondent shall abstain from the use of any alcoholic product or beverage.

**RATIONALE:** Adding this word allows us to detect if testing results on a probationer included consumption alcoholic beverages but also use of or products not limited to such as: Nyquil, mouth wash or hand sanitizer.

### Alcohol Abuse Counseling/Detoxification

**NOTE-Replaced by Alcohol and Drug Abuse Treatment/Counseling**

### Blood and/or Urine Testing Drug and Alcohol Testing

Upon the request of the Board or its designee, Respondent shall immediately submit, with or without prior notice, to **observed blood, urine, hair, breath, saliva or any other mode of testing and location as determined by the Board**, at Respondent's expense. Any confirmed positive finding will be considered a violation of this term. Any attempts by Respondent to circumvent the requirements of this term shall also be considered a violation of this term. This includes, but is not limited to, Respondent's failure to submit a testable sample or his or her use of any device designated to fraudulently defeat drug tests. If the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period. All terms and conditions remain in effect during the period of suspension.

**RATIONALE:** Allows for sound frequently monitored/random substance testing program if we use additional industry specimen screening tests besides blood and urine. This is currently compatible with DCA's contract for same services on probationer substance testing. As well, the probation monitor requesting random tests will be able to get testing feedback immediately if any probationer was caught being dishonest or adulterating the testing sample or its validity for the process.

### Law Examination

Respondent shall take and pass the **California Law and Professional Practice Examination (CLPPE)** within the first \_\_\_\_\_ years of probation. ~~If Respondent is directed to take an examination currently required of new applicants for licensure as a chiropractor, the examination shall be taken on a regularly scheduled date. If Respondent fails this examination, Respondent must take and pass a re-examination.~~

**Option #1:** If Respondent fails the first examination, Respondent shall cease the practice of chiropractic until the examination has been passed as evidenced by the written notice to Respondent from the Board.

**Option #2:** Respondent shall not practice chiropractic until Respondent has passed the required examination and has been so notified by the Board in writing.

The Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee currently in place. Failure to pass the **CLPPE** a required examination **within the first \_\_\_\_\_ years of probation** prior to the termination date of probation shall constitute a violation of probation. ~~and automatically extend the period of probation.~~

**RATIONALE:** ~~Crossed out text makes less wordy, additional words make term easier to follow provision. Option 1 is recommended in cases where the Respondent has been found to be incompetent or repeatedly negligent. Option 2 is recommended in cases where Respondent has been found to be incompetent or grossly negligent and patient/client injury has resulted. The term does not have to have both or either option.~~

### Special Purposes Examination for Chiropractic (SPEC)

Respondent shall take and pass the SPEC examination administered by the National Board of Chiropractic Examiners (NBCE) within the first two \_\_\_\_\_ years of probation. If Respondent fails this examination, Respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the SPEC examination after two attempts constitutes a violation of probation.

**RATIONALE:** This update allows for the appropriate deadline to be selected for the case, depending on the nature of it.

**\*Monitoring Practice Monitoring by Another Licensed Doctor of Chiropractor**

Respondent's practice shall be monitored by another doctor of chiropractic. Any costs for such monitoring shall be paid by Respondent. Within 30 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and completed application of a licensed chiropractor in this state to monitor Respondent's practice. The Practice Monitor Application form will be designated by the Board. a plan of practice in which **The practice monitor must have an active California chiropractic license in good standing with the Board and with no prior or current disciplinary action.** The monitor shall be independent, with no prior professional or personal relationship with Respondent. **The monitor must have at least 5 years of licensed chiropractic experience. It is Respondent's responsibility to ensure their practice monitor has received copies of the Accusation and in this matter along with the Decision and Order in this matter. for reference. The monitor shall read and understand the Respondent's Accusation and Order. The monitor** who shall submit written reports to the Board **for Respondent**, on a form designated by the Board, on a quarterly basis. Respondent must also assure that the required reports from the practice monitor are filed in a timely fashion. **The Respondent shall allow access to fiscal and client patient records. Respondent shall notify all current and potential patients of this term of probation which will affect the confidentiality of their records. Such notification shall be signed by each patient if their treatment records will be reviewed.**

The monitoring shall be, as required by the Board, either: Continuous -75% to 100% of a work week; Substantial -At least 50% of a work week, Partial- At least 25% of a work week; or Daily Review -Supervisor's **Monitor's** review of probationer's daily activities within 24 hours. If the monitor resigns or Respondent changes employment Respondent shall, within 15 days **of event, submit to the Board in writing** the name of new monitor **to pre-approve future monitoring or information about the new employment.**

If Respondent changes employment, Respondent shall have his or her new monitor, within 15 days after employment commences, submit notification to the Board in writing stating they have read the decision in case number \_\_\_\_\_ and is familiar with the level of supervision **monitoring** as determined by the Board.

**Option #1:** Respondent is prohibited from engaging in solo practice.

**Option #2:** Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board. NOTE: Recommended in cases of insurance and worker's compensation insurance fraud.

**RATIONALE:** **This term makes attempt to ensure that Respondent's practice management is adequately monitored. Criteria for monitor has been incorporated here and on a new Monitor Application. Cases worthy of this level of monitoring may include those with violations for incompetence, negligence, patient injury or unprofessional conduct. A form will be used by practice monitor to report findings and observations to the Board. A practice monitor can also check for billing and fiscal inaccuracies against Respondent's recordkeeping. We recommend use of Option 1 above when a practice monitor, as outlined in this Section, will be used.**

**Of Additional Note:** **Although Option 2 language is shown crossed out above (and moved to the Billing Monitor Section) it can be used as an additional requirement here for cases which require stronger enforcement and monitoring. The Cosigning Requirement states: Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board.**



### **Auditing of Billing Practices CPA**

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed certified public accountant (CPA) in this state, and a plan by which such CPA would monitor Respondent's billing practices. The CPA shall be independent, with no present or prior business, professional, or personal financial relationship with Respondent. The CPA approved by the Board shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely fashion. Respondent shall give the CPA access to Respondent's fiscal records. Monitoring shall consist of at least 4 hours per quarter of review of Respondent's fiscal records. After two quarters, if the CPA determines that less time is sufficient for compliance, the Respondent may request Board approval of a reduction of the number of hours of review. If ever the CPA prepares a quarterly report to the Board which finds substantial errors or omissions in, or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall comply therewith. All costs of monitoring shall be borne by Respondent. If at any time during the period of probation, the CPA quits or is otherwise unavailable to perform his/her monitoring duties, within 30 days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a licensed CPA in this state and a plan by which such CPA would monitor Respondent's billing practices.

**Option #1:** Within 45 days of the effective date of this decision and on a quarterly basis thereafter and at Respondent's expense, Respondent shall obtain a review of the books and records of Respondent's chiropractic practice by a certified public accountant licensed in good standing in this state approved by the Board. Said certified public accountant shall review the books and records of Respondent's chiropractic practice to determine whether Respondent has delivered, received or accepted any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for the referral of patients, clients or customers to him/her or his/her practice or by him/her. Within 10 days of the completion of each review, said certified public accountant shall complete and submit a written report of his/her review to the Board. Respondent shall be responsible for the completion and submission of each said report. Failure to comply with this condition shall be considered a violation of probation.

NOTE: Recommended in cases involving insurance fraud, capping, steering, or fees for patient referrals.

**RATIONALE:** Insurance fraud was added since many probationers during their term are generally required to have patient billings reviewed by a licensed CPA hence CPA has been commonly used already in header of this paragraph term.

### **Restitution for Consumers**

Within \_\_\_\_\_ from the effective date of this decision, Respondent shall pay to \_\_\_\_\_ the amount of \$ \_\_\_\_\_. If Respondent fails to pay the restitution as directed by the Board and on the date(s) determined by the Board it shall be a violation of probation. Respondent shall provide proof to the Board of restitution.

**RATIONALE:** Fraud or negligent action usually deems this term. Careful review is made to ensure that proper restitution is made to timely either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

### **Psychiatric or Psychological Evaluation**

Within 30 ~~10~~ days of the effective date of this decision, and on a periodic basis as may be required by the Board or its designee, Respondent shall undergo, at his/her own expense, psychiatric evaluation by a **Board-appointed or** Board-approved psychiatrist or psychotherapist. Respondent shall sign a release which authorizes the evaluator to furnish the Board a current diagnosis and written report regarding the Respondent's judgment and ability to function independently as a chiropractor with safety to the public and whatever other information the Board deems relevant to the case. The completed evaluation is the sole property of the Board. **It is Respondent's responsibility to ensure their therapist has copies of the Accusation as well as the Decision and Order in this matter.**

If the psychiatrist or psychotherapist recommends and the Board or its designee directs Respondent to undergo psychotherapy, Respondent shall, within 30 days of written notice of the need for psychotherapy, submit to the Board or its designee for its prior approval, the recommended program for ongoing psychotherapeutic **treatment** care. Respondent shall undergo and continue psychotherapy, at Respondent's own expense, until further notice from the Board. Respondent shall have the treating psychotherapist submit quarterly reports to the Board, or its designee. If recommended by the psychiatrist or psychotherapist and approved by the Board or its designee, Respondent shall be barred from practicing chiropractic until the treating psychotherapist recommends, in writing and stating the basis thereof, that Respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

**(Optional)** Commencing on the effective date of this decision, Respondent shall not engage in the practice of chiropractic until notified in writing by the Board or its designee that Respondent is psychologically fit to practice chiropractic.

NOTE: Strongly recommended for those cases where evidence demonstrates that mental illness or disability was a contributing cause of the violation.

**RATIONALE: We added that Respondent to give his/her therapist a copy of Order and Accusation.**

### **Psychotherapy**

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a psychotherapist or licensed mental health practitioner of Respondent's choice. Should Respondent, for any reason, cease treatment with the approved psychotherapist or licensed mental health practitioner, Respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of Respondent's choice to the Board for its prior approval. **It is Respondent's responsibility to ensure their therapist has copies of the Accusation and Decision and Order in this matter.** Upon approval of the psychotherapist or licensed mental health practitioner, Respondent shall undergo and continue treatment, with that therapist and at Respondent's expense, until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require Respondent to undergo psychiatric evaluations by a Board-appointed or Board-approved psychiatrist or psychotherapist. If recommended by the psychotherapist or licensed mental health practitioner and approved by the Board or its designee, Respondent shall be barred from practicing chiropractic until the treating psychotherapist or licensed mental health practitioner recommends, in writing and stating the basis thereof, that Respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

NOTE: Appropriate for those cases where evidence demonstrates sexual misconduct or commission of an act punishable as a sexual crime. Also appropriate in cases where evidence demonstrates impairment (Ex: mental illness, alcohol and/or drug abuse)

**RATIONALE: This additional comment could be helpful to assign this term, if appropriate or emphasis in certain cases. We also added that Respondent to give his/her therapist a copy of Order and Accusation.**

### **Medical Evaluation**

Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation, at Respondent's expense, by a ~~Board-appointed or~~ Board-approved physician who shall furnish a medical report to the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall, within 30 days of written notice from the Board, submit to the Board for its prior approval, the name and qualifications of a physician of Respondent's choice. Upon Board approval of the treating physician, Respondent shall undergo and continue medical treatment, with that physician and at Respondent's expense, until further notice from the Board. Respondent shall have the treating physician submit quarterly reports to the Board. Should Respondent, for any reason, cease treatment with the approved physician, Respondent shall notify the Board immediately and, within 30 days of ceasing treatment, submit the name of a replacement physician of Respondent's choice to the Board for its prior approval.

If recommended by the physician and approved by the Board or its designee, Respondent shall be barred from practicing chiropractic until the treating physician recommends, in writing and stating the basis thereof, that Respondent can safely practice chiropractic, and the Board approves said recommendation.

During suspension, Respondent shall not enter any chiropractic practice. Respondent shall not direct or control any aspect of the practice of chiropractic. Subject to the above restrictions, Respondent may continue to own or hold an interest in any chiropractic practice in which he or she holds an interest during the period of suspension.

**(Optional)** Upon the effective date of this decision, Respondent shall not engage in the practice of chiropractic until notified in writing by the Board of its determination that Respondent is medically fit to practice safely.

NOTE: Appropriate for those cases where the evidence demonstrates that the Respondent has had a physical problem/disability which was a contributing cause of the violation(s) and which may affect the Respondent's ability to practice.

### **Ethics Course**

~~Within 60 days of the effective date of this decision, Respondent shall enroll in a course in Ethics approved in advance by the Board, and shall successfully complete the course during the first year of probation. Class room attendance is specifically required. Probation shall be automatically extended for failure to complete the education as set out hereinabove.~~

### **\*Ethics and Boundaries Examination (NBCE)**

Respondent shall take and pass the Ethics and Boundaries examination administered by the National Board of Chiropractic Examiners (NBCE) within the first       months /      years       of probation. If Respondent fails this examination, Respondent must take and pass a re-examination. Respondent is responsible to provide proof to the Board of successful completion of this examination. Respondent shall pay the cost of the examination and any subsequent re-examinations at the examination fee set by the NBCE. Failure to pass the Ethics and Boundaries examination after two attempts constitutes a violation of probation.

**RATIONALE: NEW-Ethics course is now referred to as Ethics and Boundaries Examination (NBCE). The miscellaneous Ethics or Ethics and Boundaries courses were limited to quantity and quality of content. This course is specific and used as a tool to assess the understanding of ethics issues as they relate to chiropractic clinical practice and patients. The deadline for passing the examination is now indicated by either months or 1 years.**

### **Education Course**

Within \_\_\_\_ days of the effective date of this decision, and on an annual basis thereafter, Respondent shall submit to the Board for its prior approval, a program in \_\_\_\_ (e.g. specify course subject matter) an educational program or course to be designated by the Board, which shall be aimed at correcting any areas of deficient practice or knowledge which shall not be less than \_\_\_\_ hours per year, for each year of probation. \_\_\_\_ hours of the education may be obtained through distance learning. This program shall be in addition to the chiropractic continuing education requirements for re-licensure, and shall be obtained with all costs being paid by Respondent. Respondent shall provide written proof of attendance in such course or courses as are approved by the Board. Probation shall be automatically extended for failure to complete the education as set out hereinabove. Failure to complete the annual \_\_\_\_ hours of education constitutes a violation of probation.

**RATIONALE: Section enhanced to include distance learning.**

### **Community Service**

Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent shall provide volunteer services on a regular basis with a **non-profit** community or charitable facility or agency for at least \_\_\_\_ hours per month for the first \_\_\_\_ months/years of probation. Such community service does not necessarily include chiropractic service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a monthly/quarterly basis.

**Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of this decision shall not be accepted in fulfillment of this condition.**

Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation.

**RATIONALE: Adding these comments is appropriate in those cases where the Respondent will need to rehabilitate from wrongdoing after actually or potentially harming the public, consumer or a patient. Also time frames to complete service can be set. Paragraph flows better with use additional words for emphasis.**

### **Restricted Practice**

Respondent's practice of chiropractic shall be restricted to [specify patient population and/or setting] for the first \_\_\_\_ years of probation. Within 30 days from the effective date of the decision, Respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

**NOTE: The restrictions shall be appropriate to the violation.**

### **Third Party Presence - Sexual Transgressors-Chaperone**

During probation, Respondent shall have a third party **chaperone** present in the examination or treatment room while **consulting**, examining and/or treating (female/male/minor) patients. Respondent shall, within 30 days of the effective date of the decision, submit to the Board or its designee for its **prior** approval the name(s), **photo identification and contact information** of persons who will be the third party **chaperone**. present and a plan describing the third party's duties.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain: 1.) patient name, address and telephone number; 2.) date of service; 3.) chaperone signature; 4.) patient gender; and 5.) patient signature. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection, is a violation of probation.

The Respondent shall execute a release authorizing the third party(ies) **chaperone** present to divulge any information that the Board or its designee may request on a periodic basis during the probation **period** monitoring.

NOTE: Sexual transgressors should be placed in a supervised environment.

**RATIONALE:** This condition continues to allow the Board to monitor Respondent by use of a third party chaperone in those cases involving sexual misconduct. Chaperone must be in the room during the patients' treatment, examination or consultation.

### **\*Notification to Patients**

Respondent shall notify all current and potential patients of the his/her probation requirements by providing posting a copy of the final decision and Order in this matter and by giving on a form designated by the Board, or Respondent shall posting a copy of the final decision and Order \*within public view in this matter inside common areas within the practice which include the front desk, the examination room(s) and patient reception room(s). especially any term or condition of probation which will affect their treatment or the confidentiality of their records. Patient Such notification shall be signed by each patient prior to continuing or commencing treatment. on a form designated by the Board. Respondent shall submit, upon request by the Board, satisfactory evidence of compliance with this term of probation. Terms of probation which require such notification include, but are not limited to, suspension of practice, supervised practice, and restricted practice.

**RATIONALE:** Similar to what is required by employee notice, we require posting of this notice Decision or circulating copy of order to alert patients and patients they must sign form. we require signed patient copies of this notification upon request. Posting of Decision would occur at front desk, in treatment/waiting room etc.

### **Criminal Probation/Parole Reports**

Respondent shall provide a copy of the conditions of any criminal probation/parole to the Board, in writing, within 10 days of the issuance or modification of those conditions. Respondent shall provide the name of his or her probation/parole officer to the Board, in writing, within 10 days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the Board within 10 days after Respondent receives a copy of such a report.

## **BILLING MONITOR**

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of a ~~one or more persons~~ to act as a billing monitor. The proposed billing monitor(s) can be one of the following: shall have been 1.) a licensed chiropractor, licensed for at least five (5) years and ~~not have ever~~ never been subject to any disciplinary action by the Board or a certified professional coder/ medical auditor. All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. It is Respondent's responsibility to ensure their billing monitor has copies of the Accusation in this matter along with the Decision and Order for reference. Once the Board has approved a billing monitor, Respondent shall submit a plan or scope of review by which the billing monitor will provide monitoring of Respondent's billing practices. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the billing monitor. The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner. Respondent shall give the monitor access to all of Respondent's chiropractic practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

Option #1: Respondent shall be prohibited from unilaterally signing insurance and worker's compensation insurance claim documents. All insurance and workers' compensation insurance claim forms are to be co-signed by a licensed chiropractor approved by the Board.

**RATIONALE: This section is NEW. A billing monitor can be an appropriate or less costly alternative in lieu of CPA to review flow of billing systems after review of those systems, statements, redacted treatment records which substantiate billing charges for services. Recommended in cases involving billing incompetence, billing irregularities or insurance, worker's compensation insurance fraud. Billing monitors can be licensed doctors of chiropractic who have experience with efficient billing practice management and/or also professional medical coders who regularly monitor accuracies within a health practice's billing systems.**





## Monitor of Practice Application

Please attach a separate sheet or complete the information on the reverse side if needed. Please complete each section and **attach your curriculum vitae.**

### APPLICANT INFORMATION

Name:		CA License Number: D.C.	
Address of Record:			
City:	State:	ZIP Code:	
Phone:	Fax:	E-mail:	
Have you ever been employed by or provided services to the Board? YES <input type="checkbox"/> NO <input type="checkbox"/>			
If so, when and what services?			
Name of Probationer you will be monitoring		License Number	

### EMPLOYMENT INFORMATION

Are you self employed?		YES <input type="checkbox"/> NO <input type="checkbox"/>	
Current/Last Employer:		How long?	
Address:			
City:	State:	ZIP Code:	
Phone:	Fax:	E-mail:	
Position:			

### PROFESSIONAL QUALIFICATIONS

Do you have the knowledge and skill in case review of chiropractic patient records (including x-rays) for the purpose of maintaining accuracy?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Do you have the knowledge and skill in rendering opinions regarding treatment utilization?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Do you have any past or current professional or personal relationship with probationer?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Do you have knowledge and skill in the fiscal/billing records management of a chiropractic practice?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
Do you have at least 5 years of active licensed chiropractic treatment experience?		YES <input type="checkbox"/>	NO <input type="checkbox"/>

### DISCIPLINARY INFORMATION

Have you had any Disciplinary Action against your Chiropractic license in CA or any other State		YES <input type="checkbox"/>	NO <input type="checkbox"/>
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Have you ever been the subject of an investigation by any health insurance program? YES ☐ NO ☐

Have you ever been convicted of a misdemeanor or felony or are you currently under indictment for any alleged criminal activities? YES ☐ NO ☐

Have you ever been the subject of an administrative, civil, or criminal complaint or investigation regarding sexual misconduct? YES ☐ NO ☐

Have you ever voluntarily surrendered a professional license, staff privileges or consented to a limitation of the same pending a review or investigation? YES ☐ NO ☐

Are there any other issues that should be disclosed that may have an adverse impact on your ability to deliver impartial and objective professional monitoring services? YES ☐ NO ☐

### CERTIFICATION

**Please Read and Initial Each Paragraph, Sign and Date**

I hereby certify that I have not knowingly withheld any information that might adversely affect selection as probationer's Monitor of Practice. The answers given by me are true and correct to the best of my knowledge. I further certify that I have personally completed this application. \_\_\_\_\_

I understand any costs involved in agreeing to be a Monitor of Practice will be borne by probationer. \_\_\_\_\_

I hereby authorize the Board to thoroughly consider and investigate all of the information I have provided on this application, including attachments related to my suitability for appointment to Practice Monitor. In addition, I hereby release the Board, my current and former employers and all other persons, corporations, partnerships and associations from any and all claims, demands or liabilities arising out of or in any way related to such investigation or disclosure. \_\_\_\_\_

I hereby state I have no prior or current personal or professional relationship with probationer. \_\_\_\_\_

On behalf of the probationer, I hereby agree to submit a Quarterly Monitor Report, on a form designated by the Board, to the Board, in a timely manner. \_\_\_\_\_

I hereby state I have read probationer's Accusation/Decision and Order. \_\_\_\_\_

**I hereby certify under penalty of perjury under the laws of the State of California that all statements, answers and representations in this application, including all attachments, are true and accurate.**

**Signature of applicant:** \_\_\_\_\_ **Date** \_\_\_\_\_

**Print Name:** \_\_\_\_\_





## PATIENT NOTIFICATION

The chiropractor, named below, has been placed on probation with the Board of Chiropractic Examiners. Conditions of probation require that the chiropractor notify you, the patient, of his/her probationary status.

Chiropractor's Name: John Doe License # DC- 12345

Term of Probation: From \_\_\_\_\_ to \_\_\_\_\_

The terms and conditions of the above chiropractor's probation are detailed in Accusation 2010-XXX. Following are term(s) and condition(s) that may affect your treatment:

- ✓ Dr. Do D.C. must have a third party chaperone while consulting, examining and/or treating female patients.

***The Section Below is to be Completed by the Patient***

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Your signature verifies that you have been given the opportunity to read the Board's Decision in case 2010-XXX that places this chiropractor on probation.***



# **Uniform Standards Regarding Substance-Abusing Healing Arts Licensees**

Senate Bill 1441 (Ridley-Thomas)

Implementation by  
Department of Consumer Affairs,  
Substance Abuse Coordination Committee



Brian J. Stiger, Director  
April 2011



**Substance Abuse Coordination Committee**

Brian Stiger, Chair  
**Director, Department of Consumer Affairs**

Elinore F. McCance-Katz, M.D., Ph. D.  
**CA Department of Alcohol & Drug Programs**

Janelle Wedge  
**Acupuncture Board**

Kim Madsen  
**California Board of Behavioral Sciences**

Robert Puleo  
**Board of Chiropractic Examiners**

Lori Hubble  
**Dental Hygiene Committee of California**

Richard De Cuir  
**Dental Board of California**

Linda Whitney  
**Medical Board of California**

Heather Martin  
**California Board of Occupational Therapy**

Mona Maggio  
**California State Board of Optometry**

Teresa Bello-Jones  
**Board of Vocational Nursing and  
Psychiatric Technicians**

Donald Krpan, D.O.  
**Osteopathic Medical Board of California**

Francine Davies  
**Naturopathic Medicine Committee**

Virginia Herold  
**California State Board of Pharmacy**

Steve Hartzell  
**Physical Therapy Board of California**

Elberta Portman  
**Physician Assistant Committee**

Jim Rathlesberger  
**Board of Podiatric Medicine**

Robert Kahane  
**Board of Psychology**

Louise Bailey  
**Board of Registered Nursing**

Stephanie Nunez  
**Respiratory Care Board of California**

Annemarie Del Mugnaio  
**Speech-Language Pathology & Audiology &  
Hearing Aid Dispenser Board**

Susan Geranen  
**Veterinary Medical Board**

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**#1 SENATE BILL 1441 REQUIREMENT**

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

**#1 Uniform Standard**

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
  - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
  - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
  - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
  - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
  - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
  - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

**#2 SENATE BILL 1441 REQUIREMENT**

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

**#2 Uniform Standard**

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

**#3 SENATE BILL 1441 REQUIREMENT**

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

**#3 Uniform Standard**

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

**#4 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

**#4 Uniform Standard**

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

**TESTING FREQUENCY SCHEDULE**

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

\*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

**EXCEPTIONS TO TESTING FREQUENCY SCHEDULE****I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

## II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

## III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

## IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

## V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

## **OTHER DRUG STANDARDS**

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

#### **PETITIONS FOR REINSTATEMENT**

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

#### **OUTCOMES AND AMENDMENTS**

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

##### **Historical Data - Two Years Prior to Implementation of Standard**

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

**Post Implementation Data- Three Years**

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

**Data Collection**

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier  
License Type  
Probation/Diversion Effective Date  
General Range of Testing Frequency by/for Each Probationer/Diversion Participant  
Dates Testing Requested  
Dates Tested  
Identify the Entity that Performed Each Test  
Dates Tested Positive  
Dates Contractor (if applicable) was informed of Positive Test  
Dates Board was informed of Positive Test  
Dates of Questionable Tests (e.g. dilute, high levels)  
Date Contractor Notified Board of Questionable Test  
Identify Substances Detected or Questionably Detected  
Dates Failed to Appear  
Date Contractor Notified Board of Failed to Appear  
Dates Failed to Call In for Testing  
Date Contractor Notified Board of Failed to Call In for Testing  
Dates Failed to Pay for Testing  
Date(s) Removed/Suspended from Practice (identify which)  
Final Outcome and Effective Date (if applicable)



**#5 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

**#5 Uniform Standard**

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

**Group Meeting Facilitator Qualifications and Requirements:**

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**#6 SENATE BILL 1441 REQUIREMENT**

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

**#6 Uniform Standard**

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

**#7 SENATE BILL 1441 REQUIREMENT**

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

**#7 Uniform Standard**

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

**#8 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee tests positive for a banned substance.

**#8 Uniform Standard**

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

**#9 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

**#9 Uniform Standard**

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

**#10 SENATE BILL 1441 REQUIREMENT**

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

**#10 Uniform Standard**

**Major Violations** include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

**Consequences** for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
  - a) the licensee must undergo a new clinical diagnostic evaluation, and
  - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

**Minor Violations** include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

**Consequences** for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.



**#11 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

**#11 Uniform Standard**

**“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.**

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

**#12 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

**#12 Uniform Standard**

**“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.**

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

**#13 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

**#13 Uniform Standard**

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
  - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.
3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

**#14 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

**#14 Uniform Standard**

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

**#15 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

**#15 Uniform Standard**

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.



**#16 SENATE BILL 1441 Requirement**

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

**#16 Uniform Standard**

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

## **Factors to Be Considered For Informal Discipline such as Letters of Admonishment and Citation/Fines**

In reaching a determination of whether or not to discipline a licensee and under jurisdiction in Title 16, CCR, Division 4, Sections 389 and 390, the Board's Executive Officer or his or her designee can issue non discipline such as Letters of Admonishments and Citation and Fines as a method to resolve a licensee's failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic. If a fine is assessed to a citation, the penalty can range from \$100-\$5,000. Fines are not assessed to a Letter of Admonishment. The Board's authority under Title 16, CCR, Division 4, 390.1 (Attachment 1) allows for mitigating criteria and/or factors on a case by case basis when citations and fines are issued.

- (a) Nature and severity of the violation.
- (b) Length of time that has passed since the date of the violation.
- (c) Consequences of the violation, including potential or actual patient harm.
- (d) History of previous violations of the same or similar nature.
- (e) Evidence that the violation was willful.
- (f) Gravity of the violation.
- (g) The extent to which the cited person has remediated any knowledge and/or skill deficiencies which could have injured a patient.

Recommended informal discipline in Attachment 1 illustrates which method can apply. All of the factors above do not need to apply when assessing the minimum, mid and maximum range penalty.

**Informal/Formal Discipline Matrix**

Alleged Violation	Letter Of Admonishment	Minimum Fine Range \$100-\$500	Mid Fine Range \$501-\$3000	Maximum Fine Range \$3001-\$5000
<b>Chiropractic Initiative Act</b>				
5-Practicing without a valid license	✓	✓		
15-Using Doctor or prefix Dr.	✓	✓		
10-Improper use of fictitious names	✓	✓		
<b>California Code of Regulations</b>				
302-Scope of Practice			✓	
302.5-Use of laser	✓			
303-Filing of Address	✓			
304-Discipline Another Jurisdiction	✓			
308-Display of License	✓	✓		
310.2-Use of Title	✓	✓		
311-Advertising	✓	✓	✓	
312-Unlicensed Practice		✓	✓	
312.1-Chiropractic Ownership	✓	✓		
314-Law Violators	✓	✓		
316(a) -Conduct on Premises			✓	
316(b)-Sexual Misconduct on Premises				
316(c)-Sexual Misconduct with Patient				✓
317(a)-Gross Negligence			✓	
317(b)-Repeated Negligent Acts			✓	
317(c)-Incompetence			✓	
317(d)-Excessive Treatment			✓	
317(e)-Conduct Endangering Public			✓	
317(f) Admin.-Dangerous Substances				
317(g)(h) Conviction of Crime/Offense				
317(k) M Turpitude, Dishonest Acts		✓	✓	
317(l)-Make/Sign False Documents			✓	
317(n)-False Statement on App			✓	
317(p) Neg/False Advertising	✓	✓	✓	
317(q)-Fraud/Misrepresent			✓	
317(r)- Disclosure Confidential Info		✓	✓	
317(s) Capping/Steering			✓	✓
317(t)-Accepting Referral Inducements			✓	✓
319-Inapprop Billing Free/ Disc Services		✓		
318(a)-Fail to Ensure Accurate Billing	✓	✓	✓	
318(b)Fail to Maintain Records	✓	✓	✓	
319.1-Informed Consent	✓	✓		
366-CE Audits	✓	✓		
<b>Business and Professions Code</b>				
810-False or Fraudulent Claims				✓
650-Illegal Ad/Referral Sys			✓	✓
651-False Advertising		✓	✓	✓
<b>Health and Safety Code</b>				
123110-Failure to provide patient records	Maximum \$100.00			



### **§ 389. Letter of Admonishment.**

- (a) The Executive Officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with any provision of the Act, statute or regulations governing the practice of chiropractic.
- (b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the Act, statute or regulation violated and may contain an order of abatement.
- (c) The letter of admonishment shall be served upon the licensee personally or by certified United States mail at the licensee's address of record with the board. If the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.
- (d) The letter of admonishment shall inform the licensee that within 30 days of the date of the letter the licensee may do either of the following:
- (1) Submit a written request for an office conference to the Executive Officer of the board to contest the letter of admonishment.
- (A) Upon a timely request, the Executive Officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the Executive Officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference. Upon request and approval by the Executive Officer or his or her designee, the licensee may participate in the office conference by telephone.
- (B) Prior to or at the office conference, the licensee may submit to the Executive Officer declarations and documents pertinent to the subject matter of the letter of admonishment.
- (C) The Executive Officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the Executive Officer, or his or her designee, shall personally serve or send by certified United States mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.
- (D) Within thirty days of service or mailing of the written decision, the licensee shall comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order.
- (2) Comply with the letter of admonishment and, if the letter of admonishment contains an order of abatement, the licensee shall submit documentation to the Executive Officer documenting compliance with the order.

### **§390. Issuance of Citations and Fines.**

- (a) The Executive Officer of the board or his or her designee may issue a citation containing an order to pay a fine between \$100 and \$5,000 and an order of abatement against a licensee for any violation of the Act or the California Code of Regulations or any laws governing the practice of chiropractors. A citation may be issued without the assessment of a fine, when determined by the Executive Officer or his or her designee.
- (b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law or regulation alleged to have been violated.
- (c) The citation shall be served upon the cited person either personally or by certified United States mail.

#### **§390.1. Criteria to Be Considered.**

In the issuance of any citation, the following factors shall be considered:

- (a) Nature and severity of the violation.
- (b) Length of time that has passed since the date of the violation.
- (c) Consequences of the violation, including potential or actual patient harm.
- (d) History of previous violations of the same or similar nature.
- (e) Evidence that the violation was willful.
- (f) Gravity of the violation.
- (g) The extent to which the cited person has remediated any knowledge and/or skill deficiencies which could have injured a patient.